

FIRST REGULAR SESSION

# SENATE BILL NO. 532

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS LOUDON, GIBBONS AND NODLER.

Read 1st time February 19, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1475S.011

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## AN ACT

To repeal sections 213.010, 213.055, 213.070, and 537.610, RSMo, and to enact in lieu thereof four new sections relating to liability for human rights violations.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 213.010, 213.055, 213.070, and 537.610, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 213.010, 213.055, 213.070, and 537.610, to read as follows:

213.010. As used in this chapter, the following terms shall mean:

2 (1) "Age", an age of forty or more years but less than seventy years, except  
3 that it shall not be an unlawful employment practice for an employer to require  
4 the compulsory retirement of any person who has attained the age of sixty-five  
5 and who, for the two-year period immediately before retirement, is employed in  
6 a bona fide executive or high policy-making position, if such person is entitled to  
7 an immediate nonforfeitable annual retirement benefit from a pension, profit  
8 sharing, savings or deferred compensation plan, or any combination of such plans,  
9 of the employer, which equals, in the aggregate, at least forty-four thousand  
10 dollars;

11 (2) "Commission", the Missouri commission on human rights;

12 (3) "Complainant", a person who has filed a complaint with the  
13 commission alleging that another person has engaged in a prohibited  
14 discriminatory practice;

15 (4) "Disability", a physical or mental impairment which substantially  
16 limits one or more of a person's major life activities, being regarded as having  
17 such an impairment, or a record of having such an impairment, which with or  
18 without reasonable accommodation does not interfere with performing the job,

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 utilizing the place of public accommodation, or occupying the dwelling in  
20 question. For purposes of this chapter, the term "disability" does not include  
21 current, illegal use of or addiction to a controlled substance as such term is  
22 defined by section 195.010, RSMo; however, a person may be considered to have  
23 a disability if that person:

24 (a) Has successfully completed a supervised drug rehabilitation program  
25 and is no longer engaging in the illegal use of, and is not currently addicted to,  
26 a controlled substance or has otherwise been rehabilitated successfully and is no  
27 longer engaging in such use and is not currently addicted;

28 (b) Is participating in a supervised rehabilitation program and is no  
29 longer engaging in illegal use of controlled substances; or

30 (c) Is erroneously regarded as currently illegally using, or being addicted  
31 to, a controlled substance;

32 (5) "Discrimination", [any unfair treatment based on] **an adverse action**  
33 **motivated by** race, color, religion, national origin, ancestry, sex, age as it relates  
34 to employment, disability, or familial status as it relates to housing;

35 (6) "Dwelling", any building, structure or portion thereof which is occupied  
36 as, or designed or intended for occupancy as, a residence by one or more families,  
37 and any vacant land which is offered for sale or lease for the construction or  
38 location thereon of any such building, structure or portion thereof;

39 (7) "Employer" includes the state, or any political or civil subdivision  
40 thereof, or any person employing six or more persons within the state, [and any  
41 person directly acting in the interest of an employer,] but does not include  
42 corporations and associations owned and operated by religious or sectarian  
43 groups;

44 (8) "Employment agency" includes any person or agency, public or private,  
45 regularly undertaking with or without compensation to procure employees for an  
46 employer or to procure for employees opportunities to work for an employer and  
47 includes any person acting in the interest of such a person;

48 (9) "Executive director", the executive director of the Missouri commission  
49 on human rights;

50 (10) "Familial status", one or more individuals who have not attained the  
51 age of eighteen years being domiciled with:

52 (a) A parent or another person having legal custody of such individual; or

53 (b) The designee of such parent or other person having such custody, with  
54 the written permission of such parent or other person. The protections afforded

55 against discrimination on the basis of familial status shall apply to any person  
56 who is pregnant or is in the process of securing legal custody of any individual  
57 who has not attained the age of eighteen years;

58 (11) "Human rights fund", a fund established to receive civil penalties as  
59 required by federal regulations and as set forth by subdivision (2) of subsection  
60 11 of section 213.075, and which will be disbursed to offset additional expenses  
61 related to compliance with the Department of Housing and Urban Development  
62 regulations;

63 (12) "Labor organization" includes any organization which exists for the  
64 purpose, in whole or in part, of collective bargaining or of dealing with employers  
65 concerning grievances, terms or conditions of employment, or for other mutual aid  
66 or protection in relation to employment;

67 (13) "Local commissions", any commission or agency established prior to  
68 August 13, 1986, by an ordinance or order adopted by the governing body of any  
69 city, constitutional charter city, town, village, or county;

70 (14) "Person" includes one or more individuals, corporations, partnerships,  
71 associations, organizations, labor organizations, legal representatives, mutual  
72 companies, joint stock companies, trusts, trustees, trustees in bankruptcy,  
73 receivers, fiduciaries, or other organized groups of persons;

74 (15) "Places of public accommodation", all places or businesses offering or  
75 holding out to the general public, goods, services, privileges, facilities, advantages  
76 or accommodations for the peace, comfort, health, welfare and safety of the  
77 general public or such public places providing food, shelter, recreation and  
78 amusement, including, but not limited to:

79 (a) Any inn, hotel, motel, or other establishment which provides lodging  
80 to transient guests, other than an establishment located within a building which  
81 contains not more than five rooms for rent or hire and which is actually occupied  
82 by the proprietor of such establishment as his residence;

83 (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or  
84 other facility principally engaged in selling food for consumption on the premises,  
85 including, but not limited to, any such facility located on the premises of any  
86 retail establishment;

87 (c) Any gasoline station, including all facilities located on the premises of  
88 such gasoline station and made available to the patrons thereof;

89 (d) Any motion picture house, theater, concert hall, sports arena, stadium,  
90 or other place of exhibition or entertainment;

91 (e) Any public facility owned, operated, or managed by or on behalf of this  
92 state or any agency or subdivision thereof, or any public corporation; and any  
93 such facility supported in whole or in part by public funds;

94 (f) Any establishment which is physically located within the premises of  
95 any establishment otherwise covered by this section or within the premises of  
96 which is physically located any such covered establishment, and which holds itself  
97 out as serving patrons of such covered establishment;

98 (16) **"Protected class", includes race, color, religion, national**  
99 **origin, ancestry, sex, age as it relates to employment, disability, or**  
100 **familial status as it relates to housing;**

101 (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for  
102 consideration the right to occupy premises not owned by the occupant;

103 [(17)] (18) "Respondent", a person who is alleged to have engaged in a  
104 prohibited discriminatory practice in a complaint filed with the commission;

105 (19) **"Retaliate" and "retaliation", refers to materially adverse**  
106 **action affecting the terms and conditions of a person's employment or**  
107 **housing;**

108 [(18)] (20) "Unlawful discriminatory practice", any act that is unlawful  
109 under this chapter.

213.055. 1. It shall be an unlawful employment practice:

2 (1) For [an employer, because of] the race, color, religion, national origin,  
3 sex, ancestry, age or disability of any individual **to be the employer's**  
4 **motivating factor:**

5 (a) [To fail or refuse] **In failing or refusing** to hire or to discharge any  
6 individual, or otherwise to discriminate against any individual with respect to his  
7 compensation, terms, conditions, or privileges of employment[, because of such  
8 individual's race, color, religion, national origin, sex, ancestry, age or disability];

9 (b) [To limit, segregate, or classify] **In limiting, segregating, or**  
10 **classifying** his employees or his employment applicants in any way which would  
11 deprive or tend to deprive any individual of employment opportunities or  
12 otherwise adversely affect his status as an employee[, because of such individual's  
13 race, color, religion, national origin, sex, ancestry, age or disability];

14 (2) For a labor organization to exclude or to expel from its membership  
15 any individual or to discriminate in any way against any of its members or  
16 against any employer or any individual employed by an employer [because of]  
17 **which is motivated by the** race, color, religion, national origin, sex, ancestry,

18 age or disability of any individual; or to limit, segregate, or classify its  
19 membership, or to classify or fail or refuse to refer for employment any  
20 individual, in any way which would deprive or tend to deprive any individual of  
21 employment opportunities, or would limit such employment opportunities or  
22 otherwise adversely affect his status as an employee or as an applicant for  
23 employment, [because of such] **which is motivated by the** individual's race,  
24 color, religion, national origin, sex, ancestry, age or disability; or for any  
25 employer, labor organization, or joint labor-management committee controlling  
26 apprenticeship or other training or retraining, including on-the-job training  
27 programs to discriminate against any individual because of his race, color,  
28 religion, national origin, sex, ancestry, age or disability in admission to, or  
29 employment in, any program established to provide apprenticeship or other  
30 training;

31 (3) For any employer or employment agency to print or circulate or cause  
32 to be printed or circulated any statement, advertisement or publication, or to use  
33 any form of application for employment or to make any inquiry in connection with  
34 prospective employment, which expresses, directly or indirectly, any limitation,  
35 specification, or discrimination, [because of] **which is motivated by the** race,  
36 color, religion, national origin, sex, ancestry, age or disability unless based upon  
37 a bona fide occupational qualification or for an employment agency to fail or  
38 refuse to refer for employment, or otherwise to discriminate against, any  
39 individual because [of] **the employer or employment agency is motivated**  
40 **by** his race, color, religion, national origin, sex, ancestry, age as it relates to  
41 employment, or disability, or to classify or refer for employment any individual  
42 on the basis of his race, color, religion, national origin, sex, ancestry, age or  
43 disability.

44 2. Notwithstanding any other provision of this chapter, it shall not be an  
45 unlawful employment practice for an employer to apply different standards of  
46 compensation, or different terms, conditions or privileges of employment pursuant  
47 to a bona fide seniority or merit system, or a system which measures earnings by  
48 quantity or quality of production or to employees who work in different locations,  
49 provided that such differences or such systems are not the result of an intention  
50 or a design to discriminate, and are not used to discriminate, because of race,  
51 color, religion, sex, national origin, ancestry, age or disability, nor shall it be an  
52 unlawful employment practice for an employer to give and to act upon the results  
53 of any professionally developed ability test, provided that such test, its

54 administration, or action upon the results thereof, is not designed, intended or  
55 used to discriminate because of race, color, religion, national origin, sex, ancestry,  
56 age or disability.

57 3. Nothing contained in this chapter shall be interpreted to require any  
58 employer, employment agency, labor organization, or joint labor-management  
59 committee subject to this chapter to grant preferential treatment to any  
60 individual or to any group because of the race, color, religion, national origin, sex,  
61 ancestry, age or disability of such individual or group on account of an imbalance  
62 which may exist with respect to the total number or percentage of persons of any  
63 race, color, religion, national origin, sex, ancestry, age or disability employed by  
64 any employer, referred or classified for employment by any employment agency  
65 or labor organization, admitted to membership or classified by any labor  
66 organization, or admitted to or employed in any apprenticeship or other training  
67 program, in comparison with the total number or percentage of persons of such  
68 race, color, religion, national origin, sex, ancestry, age or disability in any  
69 community, state, section, or other area, or in the available workforce in any  
70 community, state, section, or other area.

71 4. **Notwithstanding any other provision of this chapter, an**  
72 **employee may not prevail in an action under this chapter where the**  
73 **employer demonstrates that it would have taken the same action in the**  
74 **absence of the impermissible motivating factor.**

75 5. **Notwithstanding any other provision of this chapter to the**  
76 **contrary, where an employer discovers evidence that would have**  
77 **constituted cause for dismissal after taking an action against an**  
78 **employee that is the cause of an action under this chapter, and the**  
79 **employer demonstrates that based on the subsequently discovered**  
80 **evidence it would have terminated the employment of the employee, the**  
81 **employee's compensatory damages for such action shall terminate as of**  
82 **the date the employer demonstrates it would have terminated the**  
83 **employee's employment.**

84 6. Notwithstanding any other provision of this chapter, it shall not be an  
85 unlawful employment practice for the state or any political subdivision of the  
86 state to comply with the provisions of 29 U.S.C. 623 relating to employment as  
87 firefighters or law enforcement officers.

213.070. It shall be an unlawful discriminatory practice:

2 (1) To aid, abet, incite, compel, or coerce the commission of acts prohibited

3 under this chapter or to attempt to do so;

4 (2) To retaliate or discriminate [in any manner] against any other person  
5 [because such person has opposed any practice prohibited by this chapter or  
6 because such person has filed a complaint, testified, assisted, or] **where such**  
7 **person's opposition to a discriminatory practice prohibited by this**  
8 **chapter was the motivating factor with respect to the retaliation;**

9 (3) To retaliate or discriminate against any other person who has  
10 participated in any manner in any investigation, proceeding or hearing conducted  
11 pursuant to this chapter **where such participation was the motivating**  
12 **factor with respect to the retaliation;**

13 [(3)] (4) For the state or any political subdivision of this state to  
14 discriminate on the basis of race, color, religion, national origin, sex, ancestry,  
15 age, as it relates to employment, disability, or familial status as it relates to  
16 housing **where such participation was the motivating factor with respect**  
17 **to the retaliation;** or

18 [(4)] (5) To discriminate in any manner against any other person because  
19 of such person's association with any person protected by this chapter.

537.610. 1. The commissioner of administration, through the purchasing  
2 division, and the governing body of each political subdivision of this state,  
3 notwithstanding any other provision of law, may purchase liability insurance for  
4 tort claims, made against the state or the political subdivision, but the maximum  
5 amount of such coverage shall not exceed two million dollars for all claims arising  
6 out of a single occurrence and shall not exceed three hundred thousand dollars  
7 for any one person in a single accident or occurrence, except for those claims  
8 governed by the provisions of the Missouri workers' compensation law, chapter  
9 287, RSMo, and no amount in excess of the above limits shall be awarded or  
10 settled upon. Sovereign immunity for the state of Missouri and its political  
11 subdivisions is waived only to the maximum amount of and only for the purposes  
12 covered by such policy of insurance purchased pursuant to the provisions of this  
13 section and in such amount and for such purposes provided in any self-insurance  
14 plan duly adopted by the governing body of any political subdivision of the state.

15 2. The liability of the state and its public entities on claims within the  
16 scope of sections 537.600 to 537.650, shall not exceed two million dollars for all  
17 claims arising out of a single accident or occurrence and shall not exceed three  
18 hundred thousand dollars for any one person in a single accident or occurrence,  
19 except for those claims governed by the provisions of the Missouri workers'

20 compensation law, chapter 287, RSMo.

21           3. No award for damages on any claim against a public entity within the  
22 scope of sections 537.600 to 537.650, **and chapter 213, RSMo**, shall include  
23 punitive or exemplary damages.

24           4. If the amount awarded to or settled upon multiple claimants exceeds  
25 two million dollars, any party may apply to any circuit court to apportion to each  
26 claimant his proper share of the total amount limited by subsection 1 of this  
27 section. The share apportioned each claimant shall be in the proportion that the  
28 ratio of the award or settlement made to him bears to the aggregate awards and  
29 settlements for all claims arising out of the accident or occurrence, but the share  
30 shall not exceed three hundred thousand dollars.

31           5. The limitation on awards for liability provided for in this section shall  
32 be increased or decreased on an annual basis effective January first of each year  
33 in accordance with the Implicit Price Deflator for Personal Consumption  
34 Expenditures as published by the Bureau of Economic Analysis of the United  
35 States Department of Commerce. The current value of the limitation shall be  
36 calculated by the director of the department of insurance, who shall furnish that  
37 value to the secretary of state, who shall publish such value in the Missouri  
38 Register as soon after each January first as practicable, but it shall otherwise be  
39 exempt from the provisions of section 536.021, RSMo.

40           6. Any claim filed against any public entity under this section shall be  
41 subject to the penalties provided by supreme court rule 55.03.

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